

Message

**From:** Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]  
**Sent:** 11/2/2018 2:56:59 PM  
**To:** Kupchan, Simma [Kupchan.Simma@epa.gov]  
**CC:** Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]  
**Subject:** Re: Follow-ups on two Florida documents

So to not hold this up further, ask the region to share with the state all the responses where we've resolved our internal issues. We can respond on the last question when we hammer out the language.

Sent from my iPhone

On Nov 1, 2018, at 5:16 PM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:

## Ex. 5 AC/DP

### David Fotouhi

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Kupchan, Simma  
**Sent:** Thursday, November 1, 2018 4:02 PM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>  
**Subject:** Follow-ups on two Florida documents

David,

Thank you very much for your input on the proposed changes to FL's rules. R4 will incorporate all of your proposed edits, but just wanted to propose one alternative edit to the **Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)** in response to a question you raised. Please see below.

### Stakeholder-proposed language:

21. "Material permit modification" and "material changes in the scope of project" mean, for the purpose of applying Section 373.4146(5), F.S., only those modifications or changes that result in a significant increase in the total project environmental impact, including wildlife impacts, or significant increase in the total project wetland impact.

### Original proposed passback:

## Ex. 5 AC/DP

## Ex. 5 AC/DP

David asked:

# Ex. 5 AC/DP

New proposed language:

# Ex. 5 AC/DP

Could you please let us know if you are comfortable with R4's revised proposed approach, or if you have concerns about it? Thank you very much for your continued attention to this matter.

Simma Kupchan  
EPA Office of General Counsel  
Water Law Office  
WJC North Building # 7426Q  
202-564-3105

---

**From:** Fotouhi, David  
**Sent:** Tuesday, October 30, 2018 7:30 PM  
**To:** Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>; Leopold, Matt (OGC) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>  
**Cc:** Glenn, Trey <[Glenn.Trey@epa.gov](mailto:Glenn.Trey@epa.gov)>; Walker, Mary <[walker.mary@epa.gov](mailto:walker.mary@epa.gov)>; Ashbee, Blake

<ashbee.blake@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>

**Subject:** RE: proposed responses to FDEP's assumption questions

My comments and suggestions are tracked in the attached document. Please let me know if you would like to discuss.

Best,

David

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

---

**From:** Palmer, Leif

**Sent:** Thursday, October 25, 2018 7:02 PM

**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>

**Cc:** Glenn, Trey <Glenn.Trey@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>

**Subject:** FW: proposed responses to FDEP's assumption questions

**Importance:** High

Matt & David – as mentioned on today's OGC call we've worked out responses to FDEP's latest questions. Trey asked me to forward this to you for your thoughts.

Matt Hicks' email below provides context.

Leif Palmer  
Regional Counsel  
US EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303  
(404) 562-9542

Ex. 6 Personal Privacy (PP) (cell)

This email is from an attorney and may contain privileged information and attorney-client communications and should not be released under FOIA or discovery to individuals or entities outside of EPA or the U.S. Department of Justice without the knowledge of the sender.

---

**From:** Hicks, Matt

**Sent:** Tuesday, October 23, 2018 5:51 PM

**To:** Palmer, Leif <Palmer.Leif@epa.gov>

**Cc:** Ghosh, Mita <Ghosh.Mita@epa.gov>

**Subject:** FW: proposed responses to FDEP's assumption questions

**Importance:** High

Leif,

Here's EPA's proposed response to the two recent questions we received from DEP on Friday. These proposed responses were generated by the Region 4 team (Tom McGill level) after consulting with Simma (both issues) and Alexis Ex. 5 Deliberative Process (DP) at OGC. DEP is waiting to hear from us before moving forward with their rulemaking so time is of the essence. More internal discussion is needed on the issue of incorporating retained waters list into EPA's Federal Register notice approving the state's program but that issue is not as time critical as the two below.

# Ex. 5 AC/DP

Please call me if you'd like to discuss further.

Thanks,

Matt

---

**From:** McGill, Thomas

**Sent:** Tuesday, October 23, 2018 5:10 PM

**To:** Zapata, Cesar <Zapata.Cesar@epa.gov>

**Cc:** Calli, Rosemary <Calli.Rosemary@epa.gov>; Purify, Johnnie <Purify.Johnnie@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>; Allenbach, Becky <Allenbach.Bekky@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Parker, Christopher <Parker.Christopher@epa.gov>

**Subject:** proposed responses to FDEP's assumption questions

**Importance:** High

Cesar,

As a follow-up to our conversation yesterday, FDEP would appreciate EPA's quick feedback on questions they asked during calls held with some of EPA's assumption team members on Oct 19 and 22<sup>nd</sup>. You'll recall that I forwarded you an email from Matt Hicks on Oct 19 regarding their basic questions, and we received additional clarification with FDEP staff in a call held on Oct 22. We understand that FDEP is awaiting EPA's feedback prior to proceeding with their Notice of Proposed Rulemaking and that FDEP would prefer EPA's feedback through a conversation instead of in writing.

Attached is a document drafted by the EPA Assumption Team that includes: (1) FDEP's questions (highlighted in blue text); (2) proposed EPA responses (highlighted in yellow text); and (3) other information to provide background/context for FDEP's questions and/or the proposed responses. We would appreciate feedback from the RA and the senior leaders at OGC/OW as quickly as they can provide it before responding to FDEP.

If you have any questions or need any additional information please let us know.

Thanks.

Tom